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Attorneys for Plaintiffs, MACKENZIE ANNE THOMA, as an individual and on behalf of other similarly situated persons

**UNITED STATES DISTRICT COURT  
CALIFORNIA CENTRAL DISTRICT**

MACKENZIE ANNE THOMA,  
a.k.a KENZIE ANNE,  
individually and on behalf of all  
similarly situated persons,

Plaintiff,

v.

VXN GROUP, LLC., a Delaware  
limited  
liability company; STRIKE 3  
HOLDINGS, LLC., a Delaware limited  
liability company; GENERAL MEDIA  
SYSTEMS, LLC., a Delaware limited  
liability company; MIKE MILLER, an  
individual; and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.: 2:23-cv-04901 WLH  
(AGRx)

**PLAINTIFF'S MOTION FOR  
PROTECTIVE ORDER**

DATE: JULY 9, 2024  
TIME: 11:00AM  
JUDGE: HON. ALICIA G.  
ROSENBERG

Plaintiff MACKENZIE ANNE THOMA ("Plaintiff" or "Ms. Thoma") hereby  
submits the following Motion for Protective Order:

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 22, 2024, Defendants served Plaintiff with a notice of subpoena on  
4 Mainboard, LLC. Plaintiff, fearing that her right to privacy is being breached by these  
5 subpoena requests, hereby submits this Motion for Protective Order, pursuant to this  
6 court's orders.

7 **II. STATEMENT OF FACTS**

8 On May 22, 2024, Defendants served Plaintiff with a Notice of Intent to Serve  
9 Subpoena on Mainboard, LLC ("MAINBOARD"). On May 24, 2024, the Parties had  
10 an initial meet and confer to discuss the narrowing of the requests in Defendants'  
11 subpoena requests. **Declaration of Rafael Yedoyan (Yedoyan Decl.) ¶2.** This meet  
12 and confer was fruitless. The Parties had a second meet and confer on May 31, 2024  
13 to discuss, among other items, the potential narrowing of the requests in Defendants'  
14 subpoena. **Yedoyan Decl. ¶3.** This meet and confer was once again fruitless. On June  
15 11, 2024, the Parties came before this honorable court to discuss Defendants'  
16 subpoena requests. Here, the court issued its minute order asking Plaintiff to submit  
17 briefing on a Protective Order for the subpoena requests No. 2-3, 6-7, 9-10 served on  
18 MAINBOARD.

19 **III. LEGAL ARGUMENT**

20 **A. Standards For A Motion For Protective Order**

21 "A party or any person from whom discovery is sought may move for a  
22 protective order in the court where the action is pending..." 22 CFR § 26(c). The  
23 relevant standard for purposes of Rule 26(c) is whether "'good cause' exists to protect  
24 th[e] information from being disclosed to the public by balancing the needs for  
25 discovery against the need for confidentiality." *Phillips ex rel. Estates of Byrd v. Gen.*  
26 *Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). This standard is lower than the  
27 typical burden a party must show for sealing documents. *Kamakana v. City & County*  
28 *of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). For good cause to exist under Rule

26(c), “the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted.” *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002).

**B. Good Cause Exists For The Granting Of A Protective Order For Subpoena Requests Nos. 2-3, 6-7, and 9-10**

Privacy is a chief consideration for the courts when considering a parties’ interests in relation to a third-party subpoena. See *United States v. Nixon*, 418 U.S. 683, 708 (1974). “Even when discovery of private information is found directly relevant to the issues of ongoing litigation, it will not be automatically allowed; there must then be a ‘careful balancing’ of the ‘compelling public need’ for discovery against the ‘fundamental right of privacy.’” *Artis v. Deere & Co.*, 276 F.R.D. 348, 352-353 (N.D. Cal. 2011). Also, “federal courts recognize a right of privacy implicit” for discovery. *RG Abrams Ins. v. L. Offs. of C.R. Abrams*, 342 F.R.D. 461, 498 (C.D. Cal. 2022).

“A reasonable expectation of privacy exists when 1) the individual has sought to preserve something as private, and 2) the person's expectation of privacy is one that society is prepared to recognize as reasonable.” *United States v. Cannon*, 264 F.3d 875, 879 (9th Cir. 2001); *United States v. Vasquez*, 706 F. Supp. 2d 1015, 1021 (C.D. Cal. 2010). Courts within the Ninth Circuit have repeatedly held that parties have a reasonable expectation of privacy for information sent through the internet because “the mere act of accessing a network does not in itself extinguish privacy expectations, nor does the fact that others may have occasional access to the computer.” *United States v. Heckenkamp*, 482 F.3d 1142, 1146-1147 (9th Cir. 2007) [*Heckenkamp*]. Parties having private conversations online, be they telephone conversations or in a chat room, have a reasonable expectation of privacy until they surrender this right. *United States v. Meek*, 366 F.3d 705, 711-712 (9th Cir. 2004). Indeed, California particularly provides for immense protections of internet-based

1 communications. See *Byars v. Goodyear Tire & Rubber Co.*, 654 F. Supp. 3d 1020,  
2 1027-1028 (C.D. Cal. 2023); See Also Cal. Penal Code § 632.7.

3 The Supreme Court of the United States held that a party has a reasonable  
4 expectation of privacy for their personal information electronically held by a third  
5 party. See *Carpenter v. United States*, 585 U.S. 296, 309 (2018). The Ninth Circuit in  
6 *Heckenkamp* found that a reasonable expectation of privacy could potentially be  
7 chilled if the network provides some sort of warning about the disclosure of certain  
8 private information. Yet, MAINBOARD's privacy policy never states that the  
9 information requested by Defendants is disclosable. **Yedoyan Decl. ¶4**. As such, there  
10 is no argument that MAINBOARD in any way extinguished Plaintiff's reasonable  
11 expectation to privacy as to the information requested by the subpoena. Finally,  
12 individuals have a legally recognized privacy interest in their personal financial  
13 information. *Look v. Penovatz*, 34 Cal. App. 5th 61, 73 (2019).

14 Requests No. 2-3, 6-7, and 9-10 all ask for information that Plaintiff had a  
15 reasonable and cognizable interest of privacy in. Should a protective order not be  
16 granted for the following requests, then Plaintiff stands to have her confidential  
17 financial information be disclosed to the public, her private dealings and personal  
18 conversations be revealed to the public, and her home address revealed to the public.

19 i. Request No. 2

20 Subpoena Request No. 2 asks MAINBOARD to "Produce all TALENT  
21 ACCOUNTING DATA submitted by any of the RELEVANT USERS on the  
22 MAINBOARD PLATFORM that RELATES to PLAINTIFF." "TALENT  
23 ACCOUNTING DATA" is defined as "all accounting data submitted to or generated  
24 by the MAINBOARD PRODUCT relating to payments due, payment received,  
25 invoices generated, invoices distributed, invoices received, and any financial reports  
26 cataloguing such payments or invoices."

27 This request would require MAINBOARD to produce private information that  
28 Plaintiff undoubtedly had a reasonable expectation of privacy for. Plaintiff, and

1 everyone else who uses MAINBOARD, used the platform with the expectation that  
2 their dealings on the platform would not become public information and used  
3 MAINBOARD as a way of preserving their privacy. Had Plaintiff not wanted to keep  
4 this information private, she would have made these deals through a public forum,  
5 such as Instagram or Facebook. All of the dealings Plaintiff would have with the  
6 “relevant users” are completely and totally private, and this request therefore asks  
7 MAINBOARD to provide information that should remain private.

8       Additionally, as the court stated in *Look*, individuals have a legally recognized  
9 privacy interest in their financial information. The documentation this request asks  
10 MAINBOARD to produce includes invoices and financial reports that relate directly  
11 to Plaintiff. In other words, this request asks MAINBOARD to produce and publicize  
12 private financial documentation that Plaintiff intends to keep private.

13       Finally, these invoices and reports will include private information relating to  
14 where Plaintiff lives. Without the granting of this protective order, Plaintiff’s address  
15 will become fully available to the public, which places her at great risk and breaches  
16 her expectation to privacy.

17                               ii.       Request No. 3

18       Subpoena Request No. 3 asks MAINBOARD to “Produce all TALENT  
19 BOOKING DATA submitted by any of the RELEVANT USERS on the  
20 MAINBOARD PLATFORM that RELATES to PLAINTIFF.” “TALENT  
21 BOOKING DATA” is defined as “any information that contains, reflects, references,  
22 or catalogues work engagements solicited, received, accepted, or denied by a user or  
23 on behalf of a user using the MAINBOARD PLATFORM, including scheduled of  
24 such work engagements, and any Documents that contains, reflects, or references any  
25 Talent Booking Data.”

26       This request would require MAINBOARD to produce private information that  
27 Plaintiff undoubtedly had a reasonable expectation of privacy for. Plaintiff, by using  
28 MAINBOARD, did not want all of her private business dealings to become widely

1 known to the public. Plaintiff's private business dealings that occurred on the  
2 platform, such as the individuals she would negotiate with and make deals with, were  
3 intended by Plaintiff to remain private. This is especially true given the intimate  
4 nature of the adult entertainment industry. Should this information become public, it  
5 could very well serve to harm Plaintiff's reputation.

6 iii. Request No. 6

7 Subpoena Request No. 6 asks MAINBOARD to "Produce all DOCUMENTS  
8 that state the dates and times any of the RELEVANT USERS submitted TALENT  
9 BOOKING DATA that RELATES to PLAINTIFF."

10 Once again, this request would require MAINBOARD to produce private  
11 information that Plaintiff undoubtedly had a reasonable expectation of privacy for.  
12 This request would require MAINBOARD to produce documents that include the  
13 names of people Plaintiff worked with, companies she negotiated with, and other  
14 private information that Plaintiff expected to remain private. Additionally, these  
15 documents would likely include invoices and other documentation that not only  
16 contain private financial information, but also would include her private address, as  
17 invoices and financial reports would include the dates and times "talent booking data"  
18 would be submitted.

19 Additionally, Plaintiff had a reasonable expectation of privacy that the work  
20 she procured on MAINBOARD was to remain private at all times, yet this request  
21 asks MAINBOARD to produce this information for the general public to see. This  
22 request would required MAINBOARD to disclose documents that indicated the  
23 people, companies, and types of projects Plaintiff would work on/with. Given the  
24 sensitive nature of the adult entertainment industry, this information, if revealed to  
25 the public, would cause Plaintiff shame, harm, and embarrassment.

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iv. Request No. 7

Subpoena Request No. 7 asks MAINBOARD to “Produce all DOCUMENTS that state the dates and times any of the RELEVANT USERS submitted TALENT ACCOUNTING DATA that RELATES to PLAINTIFF.”

Once again, the phrase “documents” can be broadly construed to include a number of different items. Invoices and other financial reports will include, at a minimum, the dates the “relevant users” submitted the talent accounting data. Additionally, as discussed for Request No. 2, “talent accounting data” includes sensitive documents such as invoices and financial reports. These invoices and financial reports will have the dates they were submitted written on them, and therefore they are documents that would need to be produced under this request. Such documentation, when produced, breaches Plaintiff’s expectation of privacy as to her financial information and other sensitive information they may contain, such as her home address.

Additionally, Plaintiff had a reasonable expectation of privacy that the work she procured on MAINBOARD was to always remain private, yet this request asks MAINBOARD to produce this information for the general public to see. This is improper and would cause Plaintiff irreparable harm.

v. Request No. 9

Subpoena Request No. 9 asks MAINBOARD to “Produce all COMMUNICATIONS that RELATE to TALENT BOOKING DATA issued by any of the RELEVANT USERS in connection with PLAINTIFF.”

This request should be subject to the protective order on several grounds. First, in asking for all “communications,” this request implicitly asks for private conversations the “relevant users” had with Plaintiff herself, including private messages. As discussed, when using MAINBOARD, Plaintiff had a reasonable expectation of privacy. These messages were intended to remain private between herself and the other “relevant users.” As such, the disclosure of these



1 communications to the public at large would undoubtedly impede Plaintiff's  
2 reasonable expectation of privacy.

3 Furthermore, the conversations had with Plaintiff, particularly regarding which  
4 people and companies to work with, is a sensitive topic given the nature of the adult  
5 entertainment industry. Should this information be revealed to the public, Plaintiff  
6 stands to suffer from shame, embarrassment, and harm. Finally, "communication" is  
7 broadly defined to include a plethora of documentation, including items such as  
8 invoices and financial reports. These documents, as discussed above, contain private  
9 information that should not be disclosed to the public at large.

10 vi. Request No. 10

11 Subpoena Request No. 10 asks MAINBOARD to "Produce all  
12 COMMUNICATIONS that RELATE to TALENT ACCOUNTING DATA issued by  
13 any of the RELEVANT USERS in connection with PLAINTIFF."

14 This request, for the reasons described for Request No. 9, asks MAINBOARD  
15 to reveal confidential communications. These communications, for example, would  
16 reveal how much she would be paid for each shoot. This is problematic for several  
17 reasons. It would reveal how much money she would be paid to sleep with certain  
18 adult entertainers, how much certain types of shoots would pay, and a plethora of  
19 other potentially embarrassing information that should remain private. Should this  
20 information be revealed to the general public, Plaintiff stands to be embarrassed and  
21 suffer harm.

22 For the reasons explained above, Plaintiff has good cause in requesting these  
23 documents to remain private and have a protective order guard these documents,  
24 should MAINBOARD produce them. Otherwise, Plaintiff stands to suffer from  
25 embarrassment and be harmed.

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1 **IV. CONCLUSION**

2 Based on all of the foregoing, Plaintiff humbly requests that this honorable  
3 Court grant Plaintiff's Motion to Protective Order.

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5 Dated: June 18, 2024

BIBIYAN LAW GROUP, P.C.

6 */s/ Rafael Yedoyan*

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